



October 27, 2016

Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-0609

Re: File No. SR-BZX-2016-42

Dear Mr. Fields:

The International Securities Exchange, LLC ("ISE")<sup>1</sup> submits this letter in response to comments submitted by the Securities Industry and Financial Markets Association ("SIFMA") encouraging the Commission to disapprove the above-mentioned proposed rule filing where the BATS BZX Exchange, Inc. ("BATS") proposes to assess options regulatory fees ("ORF") on non-members.<sup>2</sup>

Initially, Nasdaq supports SIFMA's call for greater transparency and consistency in the interpretation and application of ORF. Transparency and consistency will help bolster member confidence in the validity of the ORF. Moreover, it would help avoid the potential for the assessment of fees for regulatory funding to become susceptible to regulatory arbitrage whereby exchanges compete by including or excluding similar expenses in their ORF calculations. To that end, Nasdaq would welcome receiving guidance from the Commission in public rather than private form; in writing rather than orally; and simultaneously with other exchanges rather than bilaterally with each individual exchange. Nasdaq would also welcome the SEC's review of every exchange's ORF calculations in order to ensure consistency in its application. Nasdaq believes that this would address SIFMA's concerns, as well as Nasdaq's own.

Additionally, although we agree with SIFMA that it is inappropriate for BATS to assess ORF on non-members, we wish to correct the record on an unsubstantiated assertion that SIFMA makes about ORF collection on our markets. Specifically, SIFMA claims that certain exchanges, including ISE and ISE Gemini, currently assess ORF on non-members in a manner that is "not supported by relevant exchange rules or the Exchange Act itself."<sup>3</sup> This assertion is false. As articulated in our fee schedule, we assess ORF on each member for

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<sup>1</sup> This letter also responds to comments about ISE's affiliate, ISE Gemini, LLC ("ISE Gemini"). ISE and ISE Gemini are subsidiaries of Nasdaq, Inc. ("Nasdaq").

<sup>2</sup> See Letter dated October 13, 2016 from Ellen Greene, Managing Director, SIFMA to Brent J. Fields, Secretary, Commission ("SIFMA Letter").

<sup>3</sup> See SIFMA Letter at page 4.

all options transactions executed or cleared by the member that are cleared by The Options Clearing Corporation in the customer range, regardless of the exchange on which the transaction occurs.<sup>4</sup> ISE and its affiliated markets do not assess ORF on non-members. Trades that are assessed ORF are either executed or cleared by a member of that exchange. In either case, the ORF is collected from the clearing firm in accordance with rules filed with the Commission.<sup>5</sup>

We thank the Commission for the opportunity to comment on the proposed rule change. If you have any additional questions, or if we can be of further assistance in this matter, please do not hesitate to contact us.

Sincerely,

  
Jeanine Hightower  
Chief Operating Officer

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<sup>4</sup> See ISE Schedule of Fees, VII. Legal & Regulatory, C. Options Regulatory Fee.

<sup>5</sup> See e.g. Securities Exchange Act Release No. 70859 (November 13, 2013), 78 FR 69501 (November 19, 2013) (SR-ISE-2013-54).